IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Civil Revision Application No. 125 of 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. D.J. Sindhu, Advocate for the applicant.

CORAM : A.H. JOSHI, J.

DATED : 20th November, 2006.

1. Heard.

2. This is a Revision Application by the defendant, who is aggrieved by the Order dated 23rd December, 2005 passed by Sixth Joint Civil Judge [Junior Division], Nagpur, below Exh.15.

3. It was a suit filed by plaintiff claiming the reliefs which read as follows:-

1) Declare that the defendant cannot alienate or create any third party interest in the suit property unless it is duly partitioned and respective shares demarcated after the satisfaction of Clause 5 (a) (i) (ii) and (iii) of Deed of Dissolution 18-12-2003.

2) Declare that the action of the defendant in above respect of the

suit property is premature and the suit property can only be either distributed or alienated in the manner as specified in Clause 1 of MoU and Clause 5 (a) (i) (ii) and (iii)of Deed of Dissolution and by no other means whatsoever.

3) Declare that the question of exercising right of Preemption of parties in respect to the suit property shall only arise after the satisfactory compliance of the terms and conditions of Clause 1 of the aforesaid Memorandum of Understanding and Clause 5 (i) (ii) and (iii) of Deed of Dissolution dated 18/12/2003 and the present offer and action of the defendant in this regard is contrary to the above terms and conditions and illegal as well.

4) Declare that neither the defendant nor any other person or agent acting on his behalf has any legal right to disturb their physical possession over the suit property.

5) The defendant, servants, agents or any other person or persons acting on his behalf be restrained permanently from disturbing with the legal physical possession of the plaintiff and the tenants over the suit property.

6) Grant any other relief as deemed fit in the interest of justice.

7) Decree the suit with cost.

4. The foundation of cause of action,

as is spelt out from the plaint, is that in the background of Partnership Firm which was dissolved, and Deed of Dissolution and the Memorandum of Understanding were drawn on 9th December, 1997 and 18th December,2003 respectively, the properties were not partitioned, however, the defendant had, without authority, started dealing with and disposing of the property. Plaintiff, therefore, claimed relief by way of injunction to the effect that the defendant had no right to alienate the property unless Memorandum of Understanding and Deed of Dissolution were acted upon. He also sought consequential relief of protecting his possession etc.

5. This suit was objected to by present petitioner by filing application [Exh.15], raising objection that the worth of the market value of the suit property was about Rs.14 crores, while the suit was couched with a relief of declaration by valuating it at Rs.1,000/- and paying paltry court fees of Rs.200/-. The learned Advocate wants rights pleaded in the plaint, which are foundation of the relief of prohibitory injunction, to be the basis for valuation of the suit. The learned Advocate, therefore, placed reliance on reported judgment of

Hon'ble Supreme Court in the case of **Corporation of the City of Bangalore Vs. M. Papaiah and another** [AIR 1989 SC 1809].

6. It is seen on facts that in case of Corporation of the City of Bangalore Vs. M. Papaih and another [supra], there existed a dispute as to the nature of ownership of plaintiff. That being so, the plaintiff had to seek a declaration of title. The case, therefore, stands totally on a different footing than the facts of the present case.

7. The petitioner herein, by his application [Exh.15], has not even suggested that either there is no business relationship, or that the properties were not joint. The existence of right claimed by the plaintiff is, thus, not brought within a controversy by previous conduct of the defendant, which would have necessitated the need of claiming the relief of declaration. In that eventuality, valuation of the suit where the claim of title is subject matter of decree prayed for would have been the foundation.

8. In this background, when a party seeks to prevent breach of right already vested in, the suit will have to be valued to the extent of right sought to be enforced and reliefs sought.

9. In the circumstances, this Court finds that the Judgment and order passed by the Trial Court rejecting application [Exh. 15] is not seen to be erroneous. There is no error of law or jurisdiction creeping in the impugned order.

10. Revision Application has no merit. It is, therefore, dismissed.

Judge

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